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Washington, DC 20536



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

FILE:

Office: TEXAS SERVICE CENTER

Date:

MAY 18 2004

IN RE:

Applicant:

APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration
and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Cindy M. Gomez for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the [REDACTED] and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Nicaragua who indicated on her application that she entered the United States as a visitor [REDACTED]. The director denied the application for [REDACTED] under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, because the applicant failed to establish she was eligible for late registration.

On appeal, counsel submits a copy of the applicant's passport and asserts that the applicant entered [REDACTED]. Counsel submits additional evidence in support of the appeal.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for TPS during the initial registration period announced by public notice in [REDACTED]
 - (2) During any subsequent extension of such designation if at the time of the initial registration period:
 - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
 - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;
 - (iii) The applicant is a parolee or has a pending request for reparole; or
 - (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

The phrase continuously physically present, as defined in 8 C.F.R. § 244.1, means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

The phrase continuously resided, as defined in 8 C.F.R. § 244.1, means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

[REDACTED] must demonstrate that they have continuously resided in the [REDACTED] and that they have been continuously physically present since [REDACTED]

The initial registration period for [REDACTED] through [REDACTED]

The record reveals that the applicant filed her application with the Immigration and [REDACTED]

To qualify for late registration, the applicant must provide evidence that during the initial registration period, she was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and she had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

The burden of proof is upon the applicant to establish that she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by CIS. 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from her own statements. 8 C.F.R. § 244.9(b).

On [REDACTED] the applicant was provided the opportunity to submit evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing her qualifying residence and physical presence in the United States. The applicant, in response, provided additional documentation.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on [REDACTED]

On appeal, counsel for the applicant asserts that the applicant entered the [REDACTED] and presents photocopies of the applicant's passport entries. The record also contains an indecipherable copy of a [REDACTED] indicating the applicant's entry [REDACTED] for pleasure with stay [REDACTED]. The date of entry and other identifying features of the admission stamp are not visible. Counsel, however, makes no assertions as to the linkage between her submissions on appeal and the applicant's [REDACTED]

Regardless, there is nothing in the record to indicate that the applicant extended her stay as a non-immigrant. To be eligible for late registration as a non-immigrant under 8 C.F.R. § 244.2 (f)(2)(i) and (g), the applicant should have filed her application for TPS no later than 60 days after the expiration date of her permission to remain in the United States as a non-immigrant [REDACTED]. The applicant, however, did not submit her application until [REDACTED]. This falls outside of the 60-day period permissible under 8 C.F.R. § 244.2(g). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

Beyond the decision of the director, it also is noted that the applicant states on [REDACTED] that she entered the [REDACTED] yet counsel asserted on appeal that she entered the [REDACTED]. [REDACTED] also supports the applicant's initial sworn statement on the TPS application, as her last entry into the [REDACTED]. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of* [REDACTED]. The applicant is statutorily prohibited from establishing the required dates of continuous physical presence and residence under 8 C.F.R. § 244.2(b) and (c).

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed.